

# **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Adv.Pro.No.  
08-01789(BRL)

Debtor.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.  
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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\* \* \*

VIDEOTAPED DEPOSITION  
OF JEFFREY M. WEINGARTEN

\* \* \*

TRANSCRIPT of testimony as reported  
by NANCY C. BENDISH, Certified Court Reporter,  
RMR, CRR and Notary Public of the State of  
New York, at the offices of Baker Hostetler,  
45 Rockefeller Plaza, New York, New York, on  
Wednesday, July 15, 2015, commencing at 10:10 a.m.

1 A P P E A R A N C E S:

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45 Rockefeller Plaza  
New York, New York 10111

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BY: LAN HOANG, ESQ.  
GANESH KRISHNA, ESQ.

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AMANDA E. FEIN, ESQ.  
For Irving H. Picard, Trustee

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BY: JUDITH A. ARCHER, ESQ.  
JAMI MILLS VIBBERT, ESQ.

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For Ascot Partners LP

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DECHERT, LLP  
1095 Avenue of the Americas  
New York, New York 10036-6797

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BY: NEIL A. STEINER, ESQ.  
DAPHNE T. HA, ESQ.

14

For Gabriel Capital Corp.  
and J. Ezra Merkin

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16

ALSO PRESENT:

17

HANNA MILLER, Norton Rose  
NIKI IKAHIHIFO-BENDER, Norton Rose  
KEVIN FRANK, Videographer

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1 THE WITNESS: I'm sorry, sorry,  
2 sorry.

3 Q. Did you review more transcripts  
4 than that are set forth on the documents  
5 considered list in the preparation of your  
6 report in this matter?

7 A. Not that I remember, no.

8 Q. Are you aware of the number of  
9 depositions that have been taken in this matter?

10 A. No, I am not.

11 Q. Other than the transcripts that  
12 are set forth on this list, were other  
13 transcripts made available to you?

14 MR. STEINER: Objection to form.

15 A. Was there a supplemental list?  
16 When was this list submitted with documents?

17 Q. This was the list that was  
18 appended to your expert report dated March 19,  
19 2015.

20 A. I don't remember if I read any  
21 transcripts subsequent to this. I think I read  
22 the transcript of the deposition of  
23 Mr. Pomerantz.

24 Q. Okay. But that was subsequent to  
25 the issuance of this report; is that correct?

1 Q. Anything else?

2 A. No. It's stuff that I would have  
3 read in here.

4 Q. I just want to put on the record  
5 the representation that the Bates numbers for  
6 the Trustee's exhibit for Mr. Merkin's Madoff  
7 file do match the Bates numbers that are set  
8 forth in your documents considered list, the  
9 supplemental list that was provided to us.

10 In the Madoff file can you take a  
11 look at, it's a document that's Bates numbered  
12 0313213.

13 A. Are these in any kind of order?

14 Q. They're in order by Bates number  
15 on the bottom right-hand corner.

16 A. Everything I have is 039.

17 MR. STEINER: 393213.

18 A. 393213. What's the number again,  
19 please?

20 Q. 393213.

21 A. 393213. This is comparing Promeco  
22 Manager Series B and the S & P? Is that?

23 Q. Yes.

24 A. Okay.

25 Q. Do you recall reviewing this

1 document in connection with the preparation of  
2 your report?

3 A. I don't remember it exactly,  
4 but...

5 Q. You want to take a few minutes to  
6 take a look at it?

7 A. Okay, I'm looking at it now.

8 Q. Does it refresh your recollection  
9 that you took a look at it in connection with  
10 your report?

11 A. Frankly, it looks like a lot of  
12 other things that I would have read in  
13 connection. I can't specifically recall this  
14 one, but... as you can imagine, I don't know how  
15 many pages are in this thing, hundreds, so I  
16 can't right now recollect actually looking at  
17 this one, but I've certainly seen a number of  
18 things that show returns on a portfolio that was  
19 either Madoff's or Merkin's or somebody else.

20 Q. Can you take a look at -- I'm just  
21 going to give you, it's the second page and the  
22 bottom Bates range is 0393214 -- 3215, I'm  
23 sorry.

24 A. 3215, okay.

25 Q. Do you see the chart at number 1?

1 switched to the Big Eight firms.

2 As I said, when it became an  
3 attractive enough and large enough business,  
4 then some of the Big Eight firms started looking  
5 at it and some of the big law firms started  
6 looking at it. But at the beginning of the  
7 hedge funds there were specialty law firms that  
8 just did hedge funds, there were specialty  
9 accounting firms that just did hedge funds.

10 Q. Are you aware of the Bayou Ponzi  
11 scheme?

12 A. Not very familiar with it, no.  
13 I'm aware of just the name but I'm not very  
14 familiar with it.

15 Q. Are you aware of when the Bayou  
16 Ponzi scheme, the time frame that the -- strike  
17 that.

18 Are you aware of when the Bayou  
19 fund Ponzi scheme occurred?

20 A. You'd have to refresh my memory.  
21 I was not in -- I was not working in the U.S. at  
22 the time, so I would have been familiar with it  
23 but you'd have to refresh my memory on the date.

24 Q. Okay. I'm going to represent to  
25 you that it was exposed in 2005.

1 Are you aware that after the Bayou  
2 fund was exposed as a Ponzi scheme Mr. Merkin  
3 sent an email out regarding due diligence steps  
4 for fund managers?

5 MR. STEINER: Objection to form.

6 A. I'm not familiar with the exact  
7 timing as you discussed it, but if I saw the  
8 document, it might refresh my memory.

9 Q. If you -- so you're not aware of  
10 the particular document itself?

11 A. As I said, I'm not aware of, that  
12 there was -- I don't recall that there was a  
13 document sent out by Ezra Merkin that was  
14 immediately following the identification of a  
15 Ponzi scheme. I just haven't connected the two.

16 As I said, the Bayou thing was not  
17 something, since I was living abroad at the time  
18 and I was running a hedge fund, it was probably  
19 something at the time that I was aware of but  
20 not something that dramatically changed my life.

21 Q. Okay. If Mr. Merkin had said in  
22 that email to verify the auditors, had  
23 cautioned -- strike that.

24 If Mr. Merkin had said in that  
25 email to verify the auditors in his advice to



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Weingarten 7/15/2015

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1 JURAT

2 I, JEFFREY M. WEINGARTEN, have  
3 read the foregoing deposition and hereby affix  
4 my signature that same is true and correct,  
5 except as noted above.

6   
JEFFREY M. WEINGARTEN

7 THE STATE OF New York

8 COUNTY OF New York

9  
10 Before me, Connie Liu, on this  
11 day personally appeared Jeffrey M. Weingarten  
12 known to me (or proved to me on the oath of or  
13 through passport (description of identity  
14 card or other document) to be the person whose  
15 name is subscribed to the foregoing instrument  
16 and acknowledged to me that he/she executed the  
17 same for the purpose and consideration therein  
18 expressed.

19 Given under my hand and seal of office on  
20 this 13<sup>th</sup> day of August, 2015.

21 CONNIE LIU  
22 NOTARY PUBLIC-STATE OF NEW YORK  
No. 0116285845  
23 Qualified in Kings County  
My Commission Expires July 15, 2017

  
NOTARY PUBLIC IN AND FOR  
THE STATE OF NY

24  
25 My Commission Expires: July 15, 2017.

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## 1 REPORTER'S CERTIFICATION

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3 I, NANCY C. BENDISH, a Certified  
4 Court Reporter and Notary Public of the States  
5 of New York and New Jersey, do hereby certify  
6 that prior to the commencement of the  
7 aforementioned examination JEFFREY M. WEINGARTEN  
8 was sworn by me to testify the truth, the whole  
9 truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the  
11 foregoing is a true and accurate transcript of  
12 the testimony as taken stenographically by and  
13 before me at the time, place, and on the date  
14 hereinbefore set forth.

15 I DO FURTHER CERTIFY that I am  
16 neither a relative nor employee nor attorney nor  
17 counsel of any party in this action and that I  
18 am neither a relative nor employee of such  
19 attorney or counsel, and that I am not  
20 financially interested in the event nor outcome  
21 of this action.

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\_\_\_\_\_  
Notary Public of the State of New York

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25 Dated: July 16, 2015